

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	File Number EB-03-TP-224
	)	
Gore-Overgaard Broadcasting, Inc.	)	NAL/Acct.No. 200432700002
Licensee of Radio Station WROD(AM) in	)	FRN 0002-8427-63
Daytona Beach, Florida	)	
Vero Beach, Florida	)	

**NOTICE OF APPARENT LIABILITY FOR FORFEITURE**

Released: October 14, 2003

By the Enforcement Bureau, Tampa Office:

**I. INTRODUCTION**

1. In this Notice of Apparent Liability for Forfeiture (“NAL”), we find Gore-Overgaard Broadcasting, Inc. (“Gore-Overgaard”), licensee of AM radio station WROD, Daytona Beach, Florida, apparently liable for a forfeiture in the amount of two thousand dollars (\$2,000) for repeated and willful violation of Section 11.52(d) of the Commission’s Rules (“Rules”).<sup>1</sup> Specifically, we find Gore-Overgaard apparently liable for failing to monitor the required Emergency Alert System (“EAS”) sources.

**II. BACKGROUND**

2. On February 7, 2002, agents from the FCC Enforcement Bureau’s Tampa Field Office (“Tampa Office”) inspected station WROD (AM) in Daytona Beach, Florida. The agent found the station’s EAS receivers not monitoring the assigned sources.

3. On February 28, 2002, the Tampa Office issued to Gore-Overgaard a Notice of Violation (“NOV”) citing WROD’s failure to monitor its assigned EAS sources. Gore-Overgaard’s response to the NOV stated that WROD now monitored the two assigned EAS sources, namely WDBO (580 AM) and WFLF (540 AM), as well as the National Weather Service.

3. On April 14, 2003, agents from the Tampa Office again inspected station WROD (AM). The broadcast station log contained no entries reflecting sending or receiving any EAS monthly tests, no entries of EAS equipment malfunctions, and no entries of explanations for failure to conduct the monthly tests. The station’s EAS unit could receive only the National Weather Service source, and not the other two assigned EAS sources.

**III. DISCUSSION**

4. Section 11.52(d) of the Rules requires broadcast stations to monitor two EAS sources specified in the State EAS Plan and FCC Mapbook. On February 7, 2002, and on April 14, 2003, station WROD failed to monitor its assigned EAS sources.

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<sup>1</sup> 47 C.F.R. § 11.52(d).

5. Based on the evidence before us, we find that Gove-Overgaard repeatedly<sup>2</sup> and willfully<sup>3</sup> violated Section 11.52(d) of the Rules by failing to monitor assigned EAS sources.

6. Section 1.80(b)(4) of the Rules<sup>4</sup> sets forth the base forfeiture amounts for various violations of the Commission's Rules. Section 1.80(b)(4) of the Rules sets the base forfeiture amount at \$2,000 for failure to make required measurements or conduct required monitoring (e.g., failure to monitor EAS sources). In assessing the monetary forfeiture amount, we must also take into account the statutory factors set forth in Section 503(b)(2)(D) of the Communications Act of 1934, as amended ("Act"), which include the nature, circumstances, extent, and gravity of the violation, and with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require."<sup>5</sup> Considering the entire record and applying the factors listed above, this case warrants a \$2,000 forfeiture.

#### IV. ORDERING CLAUSES

7. Accordingly, IT IS ORDERED THAT, pursuant to Section 503(b) of the Act,<sup>6</sup> and Sections 0.111, 0.311 and 1.80 of the Rules,<sup>7</sup> Gore-Overgaard. is hereby NOTIFIED of this APPARENT LIABILITY FOR A FORFEITURE in the amount of two thousand dollars (\$2,000) for repeated and willful violation of Section 11.52(d) of the Rules by failing to monitor its assigned EAS sources.

8. IT IS FURTHER ORDERED THAT, pursuant to Section 1.80 of the Rules, within thirty days of the release date of this NAL, Gore-Overgaard SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

9. Payment of the forfeiture may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should note the NAL/Acct. No. and FRN referenced above. Request for payment of the full amount of this NAL under an installment plan should be sent to: Chief, Revenue and Receivable Operations Group, 445 12<sup>th</sup> Street, S.W., Washington, D.C. 20554.<sup>8</sup>

10. The response, if any, must be mailed to Federal Communications Commission, Office of the Secretary, 445 12<sup>th</sup> Street, SW, Washington, DC 20554, Attn: Enforcement Bureau-Technical & Public Safety Division, and MUST INCLUDE THE NAL/Acct. No. referenced above.

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<sup>2</sup> The term "repeated," when used with reference to the commission or omission of any act, "means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day." 47 U.S.C. § 312(f)(2).

<sup>3</sup> Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that "[t]he term 'willful,' when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act ...." See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

<sup>4</sup> 47 C.F.R. § 1.80(b)(4).

<sup>5</sup> 47 U.S.C. § 503 (b)(2)(D).

<sup>6</sup> 47 U.S.C. § 503(b).

<sup>7</sup> 47 C.F.R. §§ 0.111, 0.311, 1.80.

<sup>8</sup> See 47 C.F.R. § 1.1914.

11. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices (“GAAP”); or (3) some other reliable and objective documentation that accurately reflects the petitioner’s current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

12. Under the Small Business Paperwork Relief Act of 2002, Pub L. No. 107-198, 116 Stat. 729 (June 28, 2002), the FCC is engaged in a two-year tracking process regarding the size of entities involved in forfeitures. If you qualify as a small entity and if you wish to be treated as a small entity for tracking purposes, please so certify to us within thirty (30) days of this NAL, either in your response to the NAL or in a separate filing to be sent to the Technical & Public Safety Division. Your certification should indicate whether you, including your parent entity and its subsidiaries, meet one of the definitions set forth in the list provided by the FCC’s Office of Communications Business Opportunities (OCBO) set forth in Attachment A of this Notice of Apparent Liability. This information will be used for tracking purposes only. Your response or failure to respond to this question will have no effect on your rights and responsibilities pursuant to Section 503(b) of the Communications Act. If you have questions regarding any of the information contained in Attachment A, please contact OCBO at (202) 418-0990.

13. IT IS FURTHER ORDERED THAT a copy of this NAL shall be sent by regular mail and Certified Mail Return Receipt Requested to Gore-Overgaard Broadcasting, Inc., 1000 Olde Doubloon Drive, Vero Beach, FL, 32963.

FEDERAL COMMUNICATIONS COMMISSION

Ralph M. Barlow  
District Director, Tampa Office

Attachment